

REMARKS

Reconsideration of this application is respectfully requested. Claims 1 and 35-46 are currently pending. Claims 1 and 37 have been amended. Support for the amendments can be found throughout the application as originally filed. Accordingly, no new matter has been added.

Applicant submits herewith an Information Disclosure Statement. Applicant understands that the submission of an IDS in this *continuation* application listing art cited by the Examiner in parent application 09/147,919, now U.S. Patent 6,869,793, is not necessary. See M.P.E.P. § 609.02. Nonetheless, Applicant has included U.S. Patent 5,494,671 in the IDS. This patent was applied by the prior Examiner in a rejection of original claim 1 in Paper No. 6 of parent application 09/147,919.

I. Objection to the Specification

The Examiner objected to the specification as requiring updating to reflect that U.S. Application No. 09/147,919 has issued as a patent. The specification has been amended to clarify that the parent application 09/147,919 is now U.S. Patent No. 6,869,793. Thus, this objection is moot.

II. Objection to the Claims

The Examiner objected to claims 1 and 35-46 for allegedly using improper grammar in the recitation of “one or more DNA sequence.” Claim 1 has been amended to recite “at least one DNA sequence.” Accordingly, this objection is moot.

III. Rejections Under 35 U.S.C. 112, Second Paragraph

The Examiner rejected claim 37 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite because it recites an improper Markush group and it refers to “antigens” instead of the “antigenic epitopes” of claim 1, from which claim 37 depends.

Claim 37 has been amended to replace “or” with “and,” which was indicated by the Examiner as acceptable language. Furthermore, claims, 1, and 35-37 have been amended to recite “epitope.” Accordingly, Applicant respectfully requests withdrawal of the rejection.

IV. Double patenting rejections

Claims 1 and 35-46 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,869,793. Applicant traverses this rejection.

Solely to expedite prosecution of this application and not in acquiescence to this rejection, Applicant will submit Terminal Disclaimers over U.S. Patent No. 6,869,793 in accordance with 37 C.F.R § 1.321(c). Accordingly, Applicant respectfully requests withdrawal of this rejection.

VI. Conclusion

Applicant respectfully submits that this application is now in condition for allowance. If the Examiner believes that issues remain to be addressed before a Notice of Allowance, applicant respectfully requests that the Examiner contact the undersigned to discuss any outstanding issues.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 31, 2007

By:



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